87 - 1534

No.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1987

GREGORY D. GUFFEY,
Petitioner,

vs.

CITY OF KIRKSVILLE, MISSOURI,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS, WESTERN DISTRICT

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QUESTIONS PRESENTED FOR REVIEW

I

May Law Enforcement Officers Enter A Private Residence Without A Warrant To Arrest For Alleged Municipal Traffic Ordinance Violations Which Are Civil In Nature?

A.

Will A Possible Fine of Five Hundred Dollars And A Jail Sentence Of Three Months For Such A Violation Authorize Such An Invasion To Arrest For Such A Violation?

B.

Will Hot Pursuit Authorize Such An Invasion To Arrest For Such A Violation?

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No.

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CITY OF KIRKSVILLE, MISSOURI,

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PETITION FOR WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS, WESTERN DISTRICT

OPINIONS BELOW

The Circuit Court of Adair County, Missouri, Kirksville Municipal Division, rendered no written opinion. Upon trial de novo the Circuit Court of Adair County, Missouri, filed a written Memorandum and Order, on October 21, 1986, which is not officially reported. A copy of that Order is annexed hereto as Exhibit A.

Upon appeal the Missouri Court of Appeals, Western District, on September 15, 1987, filed its Opinion affirming Petitioner's municipal ordinance violation convictions. This Opinion is reported at 740 S.W. 2d 227 (Mo. App. 1987). A copy of that Opinion is annexed hereto as Exhibit B.

The Missouri Court of Appeals, Western District, on October 27, 1987, overruled Petitioner's Motion for Rehearing and Denied Petitioner's Application for Transfer to the Missouri Supreme Court. A copy of the Notice of such action is annexed hereto as Exhibit C.

The Missouri Supreme Court on December 15, 1987, entered an order denying Petitioner's Application for Transfer filed therein. A copy of that Order is annexed hereto as Exhibit D.

STATEMENT OF JURISDICTION

The Supreme Court of Missouri entered its Order, Exhibit D, denying Petitioner's timely Application for Transfer from the Missouri Court of Appeals, Western District, on December 15, 1987. Thus petition for writ of certiorari is filed within ninety (90) days of that order and is therefore timely under the provisions of Title 28, United States Code, Section 2101 (c), this matter involving the review of three municipal court ordinance violations originally filed in the Circuit Court of Adair County, Missouri, Kirksville Municipal Division, which under Missouri law are civil proceedings. See *Kansas City v. Mathis*, 409 S.W. 2d 280, 289 (Mo. App. 1966).

This Court has jurisdiction to review the judgment below by writ of certiorari, under the provisions of Title 28, United States Code, Section 1257 (3), since there is involved herein, rights, privileges and immunities claimed under the Constitution.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

United States Constitution:

Fourth Amendment

"The right of the people to be secure in their persons, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourteenth Amendment

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Revised Statutes of Missouri:

Section 300.105

Operation of vehicles on approach of authorized emergency vehicles

"1. Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of the laws of this state, or of a police vehicle properly and lawfully making use of an audible signal only:

(1) The driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway

clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer;

(2) Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

2. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway."

Ordinances of the City of Kirksville, Missouri:

Section 13-10.1 Driving While Intoxicated or With Certain Alcohol Content.

"No person shall operate a motor vehicle while in an intoxicated condition." (Ord. No. 10142.)

Section 13-10.4 Same—Penalties.

"(a) Any person who violates the provisions of sections 13-10.1 or 13-10.2 shall be deemed guilty of a misdemeanor and on conviction shall be punished as follows:

(2) For the first violation of section 13-10.1, by a fine of not less than one hundred dollars nor more than five hundred dollars or by confinement in a jail used by the city for a term not exceeding three months or by both such fine and imprisonment;

(4) For a second violation of section 13-10.1, by a fine of not less than two hundred dollars nor

more than five hundred dollars, or by confinement in a jail used by the city for a term not exceeding three months or by both such fine and imprisonment;

(6) For the third and subsequent violations of section 13-10.1, by a fine of not less than three hundred dollars nor more than five hundred dollars, or by confinement in a jail used by the city for a term of not less than two, nor more than three months, or by both such fine and imprisonment."

. . . (Ordinance No. 10142.)

Section 13-10.5 Driving in careful, prudent manner.

"Every person operating or driving a motor vehicle shall drive and operate the same in a careful and prudent manner and shall exercise at all times the highest degree of care in the operation of the same."

STATEMENT OF THE CASE

The Petitioner was originally charged with three violations of the municipal ordinances of the City of Kirksville, Missouri, a college town with a population of approximately 18,000. These were alleged to be (1) driving while intoxicated in violation of Ordinance Number 13-10.1, (2) not careful and prudent driving by means of excessive speed and failure to obey traffic signs, in violation of Ordinance Number 13-10.5, and (3) failure to yield to emergency vehicle, in violation of Missouri Model Traffic Ordinance Section 300.105, Revised Statutes of Missouri. The Petitioner was found guilty in the Municipal Division and requested a trial de novo before a circuit judge.

That trial was held in the Circuit Court of Adair County, Missouri, without a jury. Prior to that trial Petitioner filed a Motion to Suppress Evidence which was taken with the case. Evidence was heard and the Court took the matter under advisement, eventually entering a Memorandum and Order (Exhibit A) finding the Petitioner guilty of all three violations and entering a judgment that the Petitioner be fined respectively $250.00, $50.00 and $50.00 and costs.

The City's evidence consisted primarily of the testimony of city police officers. Patrolman Roberts testified that on the night and early morning hours of January 23-24, 1986 he observed a red Camaro being driven southbound on Davis Street in Kirksville, Missouri. Roberts followed the red Camaro eastbound on Harrison Street, following at a distance of approximately one block. While travelling east on Harrison Street Roberts observed the red Camaro travelling "from the south side of the roadway to the north side of the roadway."

Roberts observed the license plate tag on the red Camaro and believed it at the time to belong to the Petitioner. The red Camaro then crossed the center line and Roberts activated the emergency lighting equipment on top of his car. The red car then turned north onto Cottage Grove, ran a stop sign at the next intersection (Illinois Street) and turned west onto Illinois Street. As the car turned west Roberts, from a distance of 70 to 100 feet, "could only see one subject in the cockpit area, one subject in the vehicle" and "identified him as being a white male" but "could not" identify him. He could only see the profile of the head, and said in his opinion that it was a male because it had short hair. The Petitioner's hair length was substantially below his collar.

Roberts next pursued the red Camaro northbound on Highway 63 at speeds approximately 105 miles per hour before chasing the car into a residential area. Roberts then saw the red car turn into a horse-shoe shaped driveway at 1110 Queens Road, a house owned by the Petitioner. The Camaro entered on the west entrance of the driveway and Roberts on the east. Roberts was approximately "a half block to a block" behind the Camaro.

The next observation by Roberts was viewing the red Camaro in the garage area. At that point in time he observed Mr. Guffey leaving from the garage area, going into the residence through a doorway in the garage. "The garage door was open and had a light on in the garage. The Defendant was wearing a red T-shirt and blue jeans." It was a very cold January night and the Petitioner did not have on a coat.

Roberts exited his patrol car while the automatic garage door was closing and he stopped it with his foot. Immediately thereafter Roberts peered into the kitchen window and "observed a white female in a kitchen area" with "blonde hair".

Officers Youngblood and William Fay, who also arrived at the scene, then entered the garage going under the garage door; the garage door was then opened by one of the officers and Roberts entered the garage and proceeded to the door leading into the residence. They knocked, announced their presence, got no response and entered the residence. The three officers walked up the basement stairs to the main floor and then entered a bedroom and turned on the bedroom light. The Petitioner and a white female were in bed. The female was fully clothed. Mr. Guffey had on the same red T-shirt and blue underwear. Roberts testified that Mr.

Guffey was "extremely intoxicated". The female also appeared to be intoxicated. She was identified as being Ann Emmerick.

Mr. Guffey was then handcuffed and taken to Police Headquarters. Mr. Guffey refused the administering of the breathalyzer test. Mr. Guffey denied operating the motor vehicle.

After finding Mr. Guffey and Ann, the officers did not check any other bedrooms to see if there was anyone else there.

Officer Youngblood testified they had no search or arrest warrant to enter the home or arrest the Petitioner nor was there any consent to enter.

Officer Gates also responded to Petitioner's home. Going east on Queens Road, Officer Gates observed a red Camaro turn into the driveway. He observed one person in the vehicle but could not distinguish whether male or female.

The State called Ann Emmerick, who after stating she was married to the Petitioner subsequent to the January 24, 1986 arrest, refused "to testify on the grounds that it might incriminate myself or my husband". The Petitioner adduced no evidence.

ARGUMENT

REASONS RELIED ON FOR GRANTING THE WRIT

Petitioner respectfully suggests that the issues presented herein are important questions of federal constitutional law which should be settled by this Court. May a police officer, who is attempting to arrest a person for a city ordinance traffic violation, enter a private house without a warrant to arrest or to search?

Searches and seizures inside a home without a warrant are presumptively unreasonable under the *Fourth Amendment. Payton v. New York,* 445 U.S. 573, 100 S. Ct. 1371, 63 L.Ed. 2d 639 (1980).

The *Fourth Amendment* applies equally to seizures of persons and to seizure of property. *Payton v. New York,* supra.

The right of a man to retreat into his own home and there be free from unreasonable government intrusion is at the very core of the *Fourth Amendment.*

The *Fourth Amendment,* in terms that apply equally to seizures of property and to seizures of persons, has drawn a firm line at the entrances to houses which may not reasonably be crossed without a warrant in the absence of exigent circumstances. *Payton v. New York,* supra.

This Court in passing on similar issues has distinguished between arrests for felony and other arrests; and between arrests occurring in public places, arrests in private places; and arrests in the private property of the arrestee. Basically, this Court has ruled that when premises searches are involved, a search warrant is re-

quired unless the circumstances are exigent or a valid consent has been given beforehand. Exigent circumstances usually mean an established risk that the person sought would escape, that evidence would be lost, damaged or destroyed, or that the safety of the officers or other persons would be endangered had the officers failed to act while a warrant was being sought. In *United States v. Watson*, 423 U.S. 411, 96 S. Ct. 820, 46 L.Ed. 2d 598 (1976) this Court held that officers could arrest without a warrant where the arrest was taking place in a public place, even though no exigent circumstances were present. In *Payton v. New York*, supra, it was held that where the arrest was to take place in the arrestee's dwelling the officer must obtain a warrant beforehand before he may enter to make the arrest.

If the arrestee is to be arrested on premises other than his own and other than at a public place, then the officer must obtain, in advance, a search warrant for the location. See *Steagald v. United States*, 451 U.S. 204, 101 S. Ct. 1642, 68 L.Ed. 2d 38 (1981). In that situation the right of a third party intervenes.

In *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642, 18 L.Ed. 2d 782 (1967), it was held that the requirement of a warrant was not necessary where the officers were pursuing a *felon* and that officers in hot pursuit may follow such a suspect into a third person's private property and search places within a structure where the individual might conceal himself or herself. It is important, again, to point out that the present Petitioner was not being arrested for a felony or even for a misdemeanor, but the officer sought to arrest him for a civil City Ordinance violation. The principal case involving the arrestee's own house is *Payton v. New York*, supra. In

that case the officers had probable cause to believe that Payton was guilty of murder. Detectives went to the defendant's apartment to arrest the defendant, without a warrant. Lights emanated from the apartment, but the officers received no response to their knock, and they forcibly entered the apartment. No one was present but the officers did seize evidence incriminating in nature. In *Riddick v. New York,* which was consolidated with *Payton* for Argument and Opinion, the officers had probable cause to believe that the Defendant was guilty of robbery. The officers went to Riddick's home without a warrant. Riddick's son answered the knock on the door and officers observed Riddick inside the house. The officers then entered the home and arrested Riddick. Incriminating evidence was also found. It was held as to both cases, that the *Fourth Amendment* prohibited the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a felony arrest. The suspect's privacy interest in his home outweighed any government interest.

In *Welsh v. Wisconsin,* 466 U.S. 740, 104 S. Ct. 2091, 80 L.Ed. 2d 732 (1984), Welsh was seen driving erratically eventually leaving his car in an open field. Police arrived at the scene and were advised, by witnesses, of what they had observed. Officers checked the vehicle registration and proceeded to Welsh's home. They had no arrest warrant. Welsh's daughter answered the door and policemen entered the home. This was minutes after Welsh had left the scene. Welsh was lying naked in bed, apparently drunk. He was then arrested and charged with driving while intoxicated. He refused to submit to a breath test and under Wisconsin law such a refusal led to a 60-day license suspension. Welsh claimed that his refusal was the result of an unlawful

arrest and therefore his license should not have been suspended. This Court first discussed *Payton v. New York,* supra, and pointed out that there the Court had not elaborated on the meaning of the term "exigent circumstances". The Court pointed out that warrantless arrests and searches and seizures inside the home are presumptively unreasonable and that the government bears the burden of demonstrating exigent circumstances in order to defeat that presumption. Most cases refuse to allow warrantless arrests in the home for non-serious crimes. The Court then pointed out that in *Welsh* there was no hot pursuit and the Court rejected any public safety rationale as well as any argument that an immediate arrest was necessary to ascertain Welsh's blood alcohol level and thus prevent the destruction of evidence. The Court concluded that a warrantless arrest in a private home could not be justified on that basis. The Court pointed out that under Wisconsin law the offense for which the defendant was arrested was a non-criminal violation and was minor in nature. In our present case, the hot pursuit of the red Camaro was not for a felony, but for a City Ordinance violation which, under the law of Missouri, is a civil offense. See *Kansas City v. Stricklin,* 428 S.W. 2d 721 (Mo. banc 1968); *Kansas City v. Mathis,* 409 S.W. 2d 280 (Mo. App. 1966); *Kansas City v. Franklin,* 401 S.W. 2d 949 (Mo. App. 1966).

The fact that the ordinance may refer to its violation as being a misdemeanor does not change this, it is not a misdemeanor under Missouri law.

Welsh cites exigent circumstances to be:

a. An established risk that the person sought would escape;

b. That evidence would be lost; or

c. That the safety of the officers or other persons would be endangered had the officers failed to act while seeking a warrant.

In our present case as in *Welsh,* the three Municipal Court violations are not criminal violations. As in *Welsh,* there was no hot pursuit—for here it had ended. Officer Gates was at the front door and three officers at the rear. The car had been abandoned. The pursuit was over.

Unlike *Welsh,* where a bystander had spoken to the defendant and observed he was drunk or sick; here, Roberts had no probable cause that the driver of the red car was intoxicated. He had seen the red car cross the center line two times—one where repairs were being made for potholes, after making an adequate stop at the preceding intersection. He observed the red car then outrun and outmaneuver him through fast cornering and high speed. He had no probable cause to believe the driver was intoxicated prior to his entry into the house. Therefore, the exigent circumstances argument of dissipation of evidence is moot.

Sergeant Youngblood had attended Junior and Senior High School with Petitioner and had known him for a long time. He testified he was not afraid the Petitioner would harm him, nor was he afraid the Petitioner would escape.

As to exigent circumstances *Welsh* held: "We therefore conclude that the common-sense approach utilized by most lower courts is required by the *Fourth Amendment* prohibition of unreasonable searches and seizures, and hold that an important factor to be considered when determining whether any exigency exists is the gravity

of the underlying offense for which the arrest is being made. Moreover, although no exigency is created simply because there is probable cause to believe that a serious crime has been committed, see *Payton*, application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense, such as this kind at issue in this case, has been committed. Application of this principle to the facts of the present case is relatively straightforward. The Petitioner was arrested in the privacy of his own bedroom for a noncriminal traffic offense. The State attempts to justify the arrest by relying on the hot-pursuit doctrine, on the threat to public safety, and on the need to preserve evidence of the Petitioner's blood-alcohol level. On the facts of this case, however, the claim of hot pursuit is unconvincing because there was not immediate or continuous pursuit of the Petitioner from the scene of a crime. Moreover, because the Petitioner had already arrived home, and had abandoned his car at the scene of the accident, there was little remaining threat to the public safety. Hence, the only potential emergency claimed by the State was the need to ascertain the Petitioner's blood-alcohol level. Even assuming, however, that the underlying facts would support a finding of this exigent circumstance, mere similarity to other cases involving the imminent destruction of evidence is not sufficient. The State of Wisconsin has chosen to classify the first offense for driving while intoxicated as a noncriminal, civil forfeiture offense for which no imprisonment is possible . . . This is the best indication of the State's interest in precipitating an arrest, and is one that can be easily identified both by the courts and by officers faced with a decision to arrest . . . Given this expression of the State's interest, a warrant-

less home arrest cannot be upheld simply because evidence of the Petitioner's blood-alcohol level might have dissipated while the police obtained a warrant. To allow a warrantless home entry on these facts would be to approve unreasonable police behavior that the principles of the *Fourth Amendment* will not sanction."

The Circuit Court of Adair County relied upon, "hot pursuit" to justify the officers' warrantless intrusion into the Petitioner's home. That Court, however, was mistaken in referring to the DWI offense as being a misdemeanor with the third offense being a felony. In Missouri that is only true where a defendant is charged with DWI under the State law in the State criminal courts and is not true where, as here, the Petitioner is charged by city police officers with a municipal ordinance violation in a Municipal Division of the court.

The Missouri Court of Appeals, in affirming, relied upon not only "hot pursuit" but on the need to preserve evidence, saying that the possible $500.00 fine and three (3) month jail sentence authorized for a violation of the City Ordinance made *Welsh* inapplicable. That Court overlooked that the officers did not have probable cause to believe the Petitioner was intoxicated at the time they invaded the house.

In other instances this Court has held that a "petty offense" is one that involves a six month jail sentence or less. See *Duncan v. Louisiana*, 391 U.S. 145, 88 S. Ct. 1444, 20 L.Ed. 2d 491 (1968) - right to jury trial; and *Bloom v. Illinois*, 391 U.S. 194, 88 S. Ct. 1477, 20 L.Ed. 2d 522 (1968) - contempt of court trials.

It is extremely important that the parameters of authority of law enforcement officers to invade the privacy of a residence be fixed so that an officer will know

what he can and what he cannot legally do. *Welsh* did not set these parameters. It is respectfully submitted that the Court should issue its writ of certiorari and determine this issue in this case.

CERTIFICATE OF SERVICE

Three copies of the foregoing Petition were mailed first class mail, postage prepaid to Howard Hickman, Attorney at Law, 404 South Elson, Kirksville, Missouri 63501, Attorney for Respondent, this 14th day of March, 1988.

ROBERT G. DUNCAN

APPENDIX

EXHIBIT A

IN THE
CIRCUIT COURT OF ADAIR COUNTY, MISSOURI
AT KIRKSVILLE

CITY OF KIRKSVILLE,	)	Case No.
Plaintiff,	)	MU286-0138MTX
vs.	)	MU286-0139MTX
GREGORY D. GUFFEY,	)	MU286-0140MTX
Defendant.	)	

MEMORANDUM AND ORDER

The three municipal cases before the court for trial de novo were consolidated for a jury waived trial before the court. The charges are 1. driving while intoxicated, 2. not careful and prudent driving and 3. failure to yield to an emergency vehicle. The parties have submitted briefs to the court.

The first issue relates to the motion of the defendant to suppress, seeking to suppress any evidence obtained as the result of the police officers entry into the defendant's home without a warrant and evidence arising from the alleged unlawful arrest of the defendant.

Very late on the night of January 23, 1986 Police Officer Roberts observed a red Camero which was being driven from side to side of a city street. After following the Camero which substantially crossed the center line several times thereafter, the officer turned on his emergency equipment to alert the Camero to come to a stop. Although the Camero slowed and seemed to yield as if

it were going to stop, it suddenly accelerated and a chase began. The pursuit was for some distance at speeds up to 95 miles per hour and ended at the defendant's residence. As the officer pulled to the rear of defendant's house, he saw a person he identified as the defendant running from the driver's door of the Camero to the entrance door of the defendant's house. Although the garage door had begun to descend, the officer was able to stop it when it reached approximately ten inches above the ground. Thereafter, although it was known that defendant and a young woman were in the residence, no response was made to the ringing of the doorbell, knocking on the door, or the police officers identification of themselves and their purpose. Thereafter, without a warrant, the officers entered the house and arrested the defendant who was apparently intoxicated.

The Fourth Amendment of the American Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

It is clearly held that the Fourth Amendment prohibits police officers from making warrantless and nonconsensual entries into a suspects home in order to make a routine felony arrest in the absence of exigent circumstances. *Payton v. New York,* 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980).

However, one of the "exigent circumstances" is the "hot pursuit" of a fleeing suspect. The suspect "may

not defeat an arrest which has been set in motion in a public place, and is therefore proper under *Watson* [*United States v. Watson*, 423 U.S. 411, 46 L.Ed.2d 598 (1976)] by the expedient of escaping to a private place." *United States v. Santana*, 427 U.S. 38, 49 L.Ed.2d 300 (1976).

In *Santana* the court found "hot pursuit" where the defendant was first observed while standing in the doorway of her house with the door open. The officers were allowed to pursue her within the house under the circumstances of the case.

Both *Payton* and *Santana* involved felony arrests while those here were for violations of municipal ordinances. In *Welch (sic) v. Wisconsin*, 466 U.S. 740, 80 L.Ed.2d 732 (1984) it was held that absent exigent circumstances, a warrantless nightime entry into an individuals home to make an arrest for a civil nonjailable traffic offense was prohibited by the Fourth Amendment. However, a "hot pursuit" was not present in the case where the drunken driver had returned home alone following an accident prior to the arrival of the police. It was also a critical factor of the case that a punishment for the violation under the Wisconsin Statute as a noncriminal civil forfeiture offense for which imprisonment was not possible. To the contrary the municipal ordinance here provides for fines up to $500 and up to three months in jail for the offenses involved. It may also be noted that an offense of driving while intoxicated, although a misdemeanor on the first two offenses, also constitutes a felony offense on the third charge. The arresting officers might have no basis to know whether the offense committed in their presence was a misdemeanor or felony. There might be less likelihood that a suspect would flee

arrest on an initial charge of D.W.I., but might be more likely to flee in a high speed chase on a more serious charge. If the officers had merely followed defendant to his home after observation of erratic driving, they could not have entered his home to arrest him. Similarily, they could not have entered his home to arrest him for nonjailable offenses such as nonpayment of parking tickets. However, in the instant case, under the exigent circumstances of "hot pursuit", the entry into the defendant's home and his arrest were lawful. The Motion to Suppress must therefore be denied.

Upon the evidence adduced on the issues presented, the court finds the defendant guilty of the charges of Driving While Intoxicated, not careful and prudent driving, and failure to yield to an emergency vehicle. It will be the judgment of the court that the defendant be fined respectively the sums of $250.00, $50.00 and $50.00 and the cost of each case.

/s/ Bruce Normile
Circuit Judge

Dated: October 21, 1986

EXHIBIT B

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CITY OF KIRKSVILLE,	)	
Respondent,	)	
v.	)	No. WD 39094
GREGORY D. GUFFEY,	)	
Appellant.	)	

Opinion Filed: September 15, 1987
Appeal from the Circuit Court of Adair County
Honorable Bruce Normile, Judge

Before Kennedy, C.J., Presiding, Pritchard and Lowenstein, JJ.

Defendant appeals from judge-tried convictions of driving while intoxicated, careless and imprudent driving, and failure to yield to emergency vehicle, all in violation of the city ordinances of Kirksville. He was assessed a fine of $250 for the intoxicated driving charge, and $50 for each of the other two. He appeals with two allegations of trial error.

The facts are as follows:

City Patrolman Roberts about midnight on January 23, 1986, fell in behind a red Camaro driving along the city streets of Kirksville. The Camaro in the space of a few blocks drove halfway across the center line of the street on three different occasions. Patrolman Roberts determined to stop the vehicle. He turned on his emergency lights and drew closer to the Camaro. The Camaro, which the officer recognized as belonging to the defendant, slowed

down after a short distance as if to stop, then accelerated rapidly. The officer at this point turned on his siren along with his emergency lights. A race along the city streets ensued, which reached speeds in excess of 100 miles per hour.

The Camaro arrived at defendant's residence, and had been parked in the lighted garage when Roberts drove up. The defendant was going through a door which led from the garage to his residence. The garage door was descending as Roberts got out of his car and approached the garage. He was able to arrest the door's descent with his foot 10 or 12 inches from the ground.

From a deck attached to the house Roberts knocked on the door and demanded admittance. There was no response. Through a kitchen window he saw a blonde white woman in the kitchen. She was standing in front of and facing an opened refrigerator.

Two other city police officers now arrived. One of them crawled under the garage door and opened it. Further pounding on the door by the officers and calls to defendant still brought no response. They opened the unlocked door from the garage and went up the stairs into a bedroom. Defendant and the woman were in bed, under covers. Defendant seemed to be asleep. The officers pulled off the covers. The woman was fully clothed. The defendant had on the red T-shirt which he had been wearing when Roberts saw him enter the house from the garage and was in his sock feet. Beside the bed was a pair of blue jeans, wet in the crotch area. Defendant's shorts were also wet in that vicinity.

Defendant gave every evidence of being in an advanced state of intoxication. He mightily resisted the officers' attempt to arrest him, but at length they were

able to wrestle him down the stairs and into their police car. They arrived at the police station at 12:15 a.m. on January 24.

1. *The legality of the arrest.*

Defendant filed a motion to suppress "evidence obtained by the Kirksville Police Department contemporaneous with and subsequent to the illegal entry into the residence of defendant." The overruling of this motion defendant says was error. He says the entry into his house to arrest him without a warrant violated his Fourth Amendment right to be free of unreasonable searches and seizures, made applicable to the states by the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643 (1961). He cites cases which hold warrantless home arrests unreasonable and illegal which would be permissible if made in a public place. Payton v. New York, 445 U.S. 573 (1980). Warrantless home arrests are not condemned, however, if they are justified by the exigencies of the situation. Welsh v. Wisconsin, 466 U.S. 740 (1984). The City claims that this arrest falls within the latter category of cases.

We hold that the trial court was correct in denying defendant's motion to suppress evidence. The arrest was lawful and the evidence gained thereby was admissible. There were two features of the case which make the exigent circumstances justifying the arrest—hot pursuit and the need to preserve evidence.

Defendant expressly concedes that the officers had grounds for a warrantless arrest outside defendant's home, but he claims that they could not validly effect a warrantless arrest by a nonconsensual entry into his house.

The officers, however, pursued defendant into his house. It was a clear case of "hot pursuit". It is held that "a suspect may not defeat an arrest which has been set in motion in a public place, and is therefore proper under *Watson* [U.S. v. Watson, 423 U.S. 411 (1976)] by the expedient of escaping to a private place." U.S. v. Santana, 427 U.S. 38, 43 (1976).

In addition to the element of "hot pursuit", there was present here the need to preserve evidence of defendant's blood alcohol level. There was probable cause to suspect from the course of defendant's driving that he was intoxicated, and it was on that charge that the officers made the arrest, along with the charge of failure to yield to an emergency vehicle. Defendant's blood alcohol might have dissipated while a warrant was being obtained, or he might have imbibed more alcohol, making any chemical test unreliable. This factor by itself was held in Welsh v. Wisconsin, *supra*, not to justify a warrantless home arrest—but the Supreme Court emphasized in that case that the State of Wisconsin had given the crime of drunken driving a minor status in classifying the first offense as "a noncriminal, civil forfeiture offense for which no imprisonment is possible." *Id.* at 754. Said the Court, "[T]he penalty that may attach to any particular offense seems to provide the clearest and most consistent indication of the State's interest in arresting individuals suspected of committing that offense." *Id.*, n.14. By contrast with the noncriminal civil forfeiture Wisconsin treatment of the offense, the City of Kirksville by ordinance has made a first offense of drunken driving, or of driving with a blood alcohol of more than .10 percent by weight, punishable by up to $500 fine and three

months in jail.[1] *Welsh* would not invalidate the arrest in the present case.

A second distinction between *Welsh* and the present case is that *Welsh* did not feature a true "hot pursuit" situation, as the Supreme Court observed, 466 U.S. at 753, while the present case is a clear case of "hot pursuit".

An arrest in quite similar circumstances to the present was upheld in State v. Niedermeyer, 617 P.2d 911 (Or. App. 1980), as against a claim that it was an illegal search and seizure. The defendant's suspected offense there was attempting to elude a police officer, described by the court as "a class A misdemeanor and a major traffic offense." *Id.* at 913.

2. *The sufficiency of the evidence of identification of defendant.*

Defendant challenges the sufficiency of the evidence to support the conviction, arguing that the identity of defendant was not shown, that the driver could have been the lady instead of the defendant.

Officer Roberts, who was acquainted with defendant, testified that he could not identify defendant as he drove the red Camaro, but could identify "a white male" as the driver. He recognized the defendant as he was going into his house through the interior garage door. This

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1. Under the statutes of Missouri, under which defendant might have been charged, the penalty for first offense driving while intoxicated is a class B misdemeanor, Sec. 577.010, RSMo Supp. 1987. A class B misdemeanor is punishable by up to $500 fine, Sec. 560.016, RSMo 1979, and six months in jail, Sec. 558.011 RSMo Supp. 1987. The penalty for first offense driving with .10 of one percent or more by weight of alcohol in the bloodstream is a class C misdemeanor. Sec. 577.012, RSMo Supp. 1987. A class C misdemeanor is punishable by up to $300 fine, Sec. 560.016 RSMo 1979, and 15 days in jail, Sec. 558.011, RSMo Supp. 1987.

was sufficient to identify the defendant as having been the driver. If there was evidence to indicate that the woman was the driver, that fact issue was for the trier of fact and we are not convinced that he made a mistake in resolving it against defendant.

The judgments of conviction on all charges are affirmed.

All concur.

Don W. Kennedy, C.J., Presiding

EXHIBIT C

MISSOURI COURT OF APPEALS

Western District
1300 Oak Street
Kansas City, Mo. 64106-2970

Peggy Stevens McGraw — Area Code 816 474-5511
Clerk-Docket Attorney

October 27, 1987

IMPORTANT NOTICE

TO: ALL ATTORNEYS OF RECORD
RE: City of Kirksville, Mo vs Guffey, Gregory D.
WD# 39094

Please be advised that Appellant's motion for rehearing was OVERRULED and transfer to Supreme Court was DENIED. See Rule 83.03.

Peggy Stevens McGraw
Clerk-Docket Attorney

cc: Howard Hickman
William David Farrar

EXHIBIT D

No. 69968
WD 39094

IN THE SUPREME COURT OF MISSOURI
September Session 1987

City of Kirksville,
Respondent,
vs. TRANSFER
Gregory D. Guffey,
Appellant.

Now at this day, on consideration of Appellant's Application to transfer the above entitled cause from the Western District Court of Appeals, it is ordered that said application be, and the same is hereby denied.

STATE OF MISSOURI—SCT.

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 1987, and on the 15th day of December 1987, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 15th day of December, 1987.

/s/ Thomas F. Simon
Clerk.